CASE NO.: 50R4781                                                    PATENT
Serial No.: 09/932,127                                      Filed: August 16, 2001
May 22, 2005
Page 9

### Remarks

Reconsideration of the present application is requested.  Claims 1-3, 5-14, and 17-25 have been

rejected under 35 U.S.C. §103 as being unpatentable over Brailean et al., USPN 5,724,369 in view of Zhao

et al., USPP 2003/0067981 and Moni et al., USPN 6,697,126 and the remaining claims (4, 15, and 16) have

been rejected as being obvious over the above references and further in view of Talluri et al., USPN

6,111,916.

To overcome the rejections, Claim 1 has been amended to clarify that the concealing and evaluating

is done on the combination of the one more macroblock and the previous particular macroblock, although

Applicant believes that this limitation grammatically was inherent in Claim 1 previously.  Independent Claim

24 has been amended to clarify that after adding the one more macroblock, the concealing and evaluating is

done on the combination of the one more macroblock and the previous particular macroblock.

In contrast, independent Claim 9 now recites that pixel value mismatches between macroblocks

belonging to different video packets are weighed differently from each other, with the differences in weighing

depending on differences in desired quality of video frames as disclosed on, e.g., page 11, lines 13-19.

Independent Claim 19 has been amended to recite assigning first weights to pixel value mismatches between

macroblocks in a first video data structure and assigning second weights to pixel value mismatches between

macroblocks in a second video data structure, with the first and second weights not being identical to each

other and with each being established based at least in part on a respective desired quality of video decoded

from the respective video data structure.  And, independent Claim 21 now requires that element value

mismatches between macroblocks belonging to different video packets are weighed differently based at least

in part on different desired qualities of video.  Claims 1-25 and 27 are pending.

1168-121.AM3

## Rejections Under 35 U.S.C. §103

Claims 1-3, 5-14, and 17-25 have been rejected under 35 U.S.C. §103 as being unpatentable over

Brailean et al. in view of Zhao et al. and Moni et al., and the remaining claims (4, 15, and 16) have been

rejected as being obvious over the above references and further in view of Talluri et al. Of relevance to

amended Claims 1 and 24, in Brailean et al. the relied-upon MSE value is used to evaluate each candidate

motion vector in isolation from other candidate motion vectors, then picking the "best" one to use, col. 7,

line 55 *et seq.* In contrast, Claim 24, for instance, now clearly specifies that the concealing and evaluating

is done on the combination of the one more macroblock and the previous particular macroblock. This is

something which, even assuming for the moment without acquiescing that the relied-upon candidate motion

vector-based MSE of Brailean et al. can serve as the claimed concealing and evaluating, Brailean et al. does

not do or suggest as an option for its MSE method. Accordingly, Claims 1 and 24 and their respective

dependent claims are patentable.

The Office Action, middle of page 4, alleges that because the same MSE equation is used in Brailean

et al. frame to frame, this means that partial mismatch values from previous iterations are "thereby" used.

This is a false syllogism that is predicated on an unstated erroneous minor premise (namely, that using the

same equation to evaluate candidate vectors means that the actual values from prior iterations must be used

in the equation.) The defect in the minor premise explains the error of the conclusion.

Turning to Claims 9, 19, and 21, the different weights used by Moni et al. are based on different

distances from the boundaries between erroneous pixels and non-erroneous pixels, col. 8, lines 20-30. The

weights are thus the same across all video packets: a pixel that is a given distance from the error boundary

1168-121.AM3

CASE NO.: 50R4781                                                    PATENT
Serial No.: 09/932,127                                    Filed: August 16, 2001
May 22, 2005
Page 11


in one video stream is weighted identically to a pixel that is the same distance from an error boundary in

another video stream.

It appears to be the examiner's point that it could happen that one video stream in Moni et al. might

possibly have no pixel that is the same distance from an error boundary as a pixel in another stream and,

hence, that different weights are accorded to different streams. Although straining broad claim construction

during prosecution to the breaking point, in the spirit of comity Applicant has amended Claims 9, 19, and

21 as discussed above to positively require something Moni et al. nowhere teaches or suggests, namely, that

the different weights used in different streams are based at least in part on differences in desired qualities

between the streams. Furthermore, *appropo* the point that Moni et al. might (or might not) happen to result

by accident in different weights being used in error correction of different streams, the examiner's attention

is directed to Scaltech Inc. v. Retec/Tetra LLC, 156 F.3d 1193 (Fed. Cir. 1999) (the mere fact that a certain

thing may result from a given set of circumstances is not sufficient).



Respectfully submitted,


John L. Rogitz
Registration No. 33,349
Attorney of Record
750 B Street, Suite 3120
San Diego, CA 92101
Telephone: (619) 338-8075


JLR:jg

1168-121_AM3